

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                                      |   |                        |
|--------------------------------------|---|------------------------|
| RICKKE L. GREEN,                     | ) |                        |
|                                      | ) |                        |
| Plaintiff,                           | ) |                        |
| v.                                   | ) | Case No. CIV-05-1214-L |
|                                      | ) |                        |
| THE HON. VIRGIL C. BLACK, DISTRICT   | ) |                        |
| JUDGE, OKLAHOMA COUNTY               | ) |                        |
| COURTHOUSE; DAVID BROCKMAN,          | ) |                        |
| ASSISTANT DISTRICT ATTORNEY,         | ) |                        |
| OKLAHOMA COUNTY DISTRICT             | ) |                        |
| ATTORNEY'S OFFICE; MARCO J. PALUMBO, | ) |                        |
| ASSISTANT PUBLIC DEFENDER,           | ) |                        |
| OKLAHOMA COUNTY PUBLIC DEFENDER'S    | ) |                        |
| OFFICE,                              | ) |                        |
|                                      | ) |                        |
| Defendants.                          | ) |                        |

**REPORT AND RECOMMENDATION**

Plaintiff, Rickke Leon Green, a state pre-trial detainee being held in the Oklahoma County Detention Center, submitted for filing in this Court a Civil Rights Complaint pursuant to 42 U.S.C. § 1983. At the time he submitted the Complaint, Plaintiff did not prepay the filing fee but instead submitted a Motion for Leave to Proceed *In Forma Pauperis*. Pursuant to an Order entered by United States District Judge Tim Leonard, the matter has been referred for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

For the reasons stated in this Report, Plaintiff is barred by 28 U.S.C. § 1915(g) from proceeding in this action *in forma pauperis*. On three or more prior occasions while incarcerated, Plaintiff has brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted. Further, Plaintiff has not shown in this action that he is in imminent danger of serious physical injury. Therefore, it is recommended that Plaintiff's

Motion for Leave to Proceed *In Forma Pauperis* be denied, that Plaintiff be given 20 days from the district court's order of denial to pay the full filing fee pursuant to Local Civil Rule 3.3(e), and that, absent pre-payment of the full filing fee, the action be dismissed without prejudice.

**Prior Occasions Barring Plaintiff From Proceeding *In Forma Pauperis***

On three or more prior occasions while incarcerated, Plaintiff has brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted. These occasions include the following:

- (1) *Rickke Leon Green v. Thomas Seymour, Stephanie K. Seymour, John P. Moore, Deanell Tacha, Wade Brorby, William Holloway, David Ebel, Bobby R. Baldock, Monroe G. McKay, James Logan and Stephen H. Anderson*, Case No. 92-773-B in the United States District Court for the Northern District of Oklahoma. This civil rights action brought under 42 U.S.C. § 1983 against discharged attorneys and judges of the Court of Appeals was dismissed pursuant to 28 U.S.C. § 1915(d) on July 11, 1995, on the basis that Plaintiff's claims were frivolous. The District Court's Order dismissing the action was affirmed on appeal. *See Green v. Seymour*, 59 F.3d 1073 (10th Cir. 1995).
- (2) *Rickke Leon Green v. Eldon Simpson and State Board of Examiners of Official Shorthand Reporters*, Case No. 92-785-E in the United States District Court for the Northern District of Oklahoma. This civil rights action alleging violations of Plaintiff's constitutional rights was dismissed on November 15, 1994, pursuant to 28 U.S.C. § 1915(d) on the ground that it was frivolous. The District Court's Order dismissing the action was affirmed on appeal. *See Green v. Simpson*, 1994 WL 642190 (10th Cir. 1994) (unpublished disposition).
- (3) *Rickke Leon Green v. Hon. Ralph G. Thompson, Chief Judge; Hon. Ronald L. Howland, Magistrate; and R. Thomas Seymour*, Case No. CIV-94-56-R in the United States District Court for the Western

District of Oklahoma. This civil rights action brought under *Bivins* and 42 U.S.C. § 1981 and § 1985(2) alleging violation of Plaintiff's constitutional rights was dismissed on June 3, 1994, for failure to state a claim upon which relief may be granted. Plaintiff's appeal of the District Court's Order (Case No. 94-6240, Tenth Circuit Court of Appeals) was dismissed for lack of prosecution on December 12, 1994.

- (4) *Rickke L. Green v. David C. Phillips III, Guy L. Hurst, Gary Elliott, James H. Payne, Frank H. Seay, Chief Judge, William B. Guthrie, and Susan Brimer Loving*, Case No. CIV-93-1498-T in the United States District Court for the Western District of Oklahoma. This civil rights action brought under *Bivins*, 42 U.S.C. § 1983, § 1985(2) and § 1986, was dismissed on August 15, 1994, as frivolous pursuant to 28 U.S.C. § 1915(d). Plaintiff's appeal of the District Court's Order (Case No. 94-6332 in the Tenth Circuit Court of Appeals) was dismissed by Order filed on January 23, 1995, on the ground that Plaintiff had waived his right to appeal by failing to file any objections to the Magistrate Judge's recommendation.

### Analysis

In this action, Plaintiff alleges that in the course of state court criminal proceedings, Defendants have conspired with each other to violate his constitutional rights and have negligently and intentionally inflicted emotional distress upon him. In conclusory fashion Plaintiff states that he has suffered pain, fright, humiliation, embarrassment, tears, anger and sleepless nights. Plaintiff, however, does not allege any facts that would demonstrate he is under imminent danger of serious physical injury. If the Court were considering the merits of the Complaint at this time, which it is not, Plaintiff's claims would be subject to dismissal for failure to state a claim upon which relief may be granted. Plaintiff has failed to allege any facts suggesting that he is entitled to proceed *in forma pauperis* under the imminent danger exception of §1915(g).

### **Pending Matters**

Plaintiff has filed an Application for Disqualification of Entire Court [Doc. # 8] and an Application for Court Order for Prompt Access to Jail's Law Library [Doc. #9]. These applications should be denied without prejudice to refiling should Plaintiff pay the full filing fee within the time period set forth herein.

### **RECOMMENDATION**

It is recommended that Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* [Doc. #2] be denied, and that Plaintiff be given 20 days from the district court's order of denial to pay the full filing fee pursuant to Local Civil Rule 3.3(e). It is further recommended that absent pre-payment of the full filing fee, the action be dismissed without prejudice. Finally, it is recommended that Plaintiff's Application for Disqualification of Entire Court [Doc. # 8] and Application for Court Order for Prompt Access to Jail's Law Library [Doc. #9] be denied.

### **NOTICE OF RIGHT TO OBJECT**

Plaintiff is advised of his right to object to this Report and Recommendation by November 28<sup>th</sup>, 2005, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72.1, by filing any objections with the Clerk of the District Court. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

**STATUS OF REFERRAL**

This Report and Recommendation disposes of all issues referred to the Magistrate Judge in this matter.

ENTERED this 7<sup>th</sup> day of November, 2005.



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VALERIE K. COUCH  
UNITED STATES MAGISTRATE JUDGE